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**Hotel Syracuse, Inc. and International Union of Operating Engineers, Local 832, AFL-CIO.**  
Case 3-CA-22322

June 26, 2000

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS HURT GEN  
AND BRAME

Upon a charge filed by the Union on January 31, 2000, the General Counsel of the National Labor Relations Board issued a complaint on April 20, 2000, against Hotel Syracuse, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 22, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On May 23, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 8, 2000, notified the Respondent that unless an answer were received by May 15, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, with an office and place of business in Syracuse, New York, where it has been engaging in operation of a hotel providing food and lodging. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of \$500,000. Annually, the Respondent,

in conducting its business operations, purchases and receives at its Syracuse, New York facility products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent, herein call the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the operation and maintenance of its heating, ventilating and air-conditioning equipment located at its facilities of the Radisson Plaza, The Hotel Syracuse, New York.

At all material times prior to July 1, 1999, the International Union of Operating Engineers, Local 71, AFL-CIO (Local 71) had been the designated collective-bargaining representative of the Union, and at all material times, Local 71 had been recognized as the representative by the Respondent. This recognition had been embodied in successive collective-bargaining agreements covering the unit, the most recent of which is effective from July 16, 1997, through July 15, 2000.

At all material times prior to July 1, 1999, based on Section 9(a) of the Act, Local 71 was the exclusive collective-bargaining representative of the unit. On or about July 1, 1999, Local 71 merged with the Union, which thereby became the successor to Local 71.

At all material times since July 1, 1999, the Union, as the successor to Local 71, has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent.

The Union, based on Section 9(a) of the Act, is the exclusive collective-bargaining representative of the unit.

From on or about July 1, 1999, through January 31, 2000, the Respondent failed to continue in full force and effect all of the terms and conditions of the 1997-2000 collective-bargaining agreement described above by failing to remit to the Union deducted dues for the months of August, September, October, November, and December 1999 and January 2000 as required under article XXIII of the agreement.

The subject of deducted Union dues relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union, without affording the Union an opportunity to bargain with the Respondent with respect to this conduct

and the effects of this conduct, and without the consent of the Union.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since July 1, 1999, to continue all the terms and conditions of the 1997–2000 collective-bargaining agreement by failing to remit to the Union dues for the months of August, September, October, November, and December 1999 and January 2000 as required under article XXIII of the agreement, we shall order the Respondent to remit to the Union the dues as required by the 1997–2000 contract, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Hotel Syracuse, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to continue in full force and effect all of the terms and conditions of the 1997–2000 collective-bargaining agreement by failing to remit to the Union dues for the months of August, September, October, November, and December 1999 and January 2000 as required under article XXIII of the agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues for the months of August, September, October, November, and December 1999 and January 2000, as required under article XXIII of the agreement, with interest, as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Syracuse, New York, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 26, 2000

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John C. Truesdale, Chairman

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Peter J. Hurtgen, Member

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J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to continue in full force and effect all of the terms and conditions of our 1997–2000 collective-bargaining agreement with the Union by failing to remit to the Union dues for the months of August, September,

October, November, and December 1999 and January 2000 as required under article XXIII of the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues for the months of August, September, October, November, and December 1999 and January 2000, as required under article XXIII of the agreement, with interest.